

THE HONORABLE JAMES L. ROBERT

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

CYWEE GROUP LTD.,

*Plaintiff,*

v.

HTC CORPORATION; and HTC

AMERICA, INC.,

*Defendants.*

Civil Action No. 17-cv-932-JLR

SECOND AMENDED COMPLAINT  
FOR PATENT INFRINGEMENT

JURY TRIAL DEMANDED

Plaintiff CyWee Group Ltd. (“Plaintiff” or “CyWee”), by and through its undersigned counsel, files this Second Amended Complaint against Defendants HTC Corporation and HTC America, Inc. as follows:

**THE PARTIES**

1. CyWee is a corporation existing under the laws of the British Virgin Islands with a principal place of business at 3F, No. 28, Lane 128, Jing Ye 1st Road, Taipei, Taiwan 10462.

1           2.     CyWee is a world-leading technology company that focuses on  
2 building products and providing services for consumers and businesses. CyWee has  
3 one of the most significant patent portfolios in the industry, and is a market leader  
4 in its core development areas of motion processing, wireless high definition video  
5 delivery, and facial tracking technology.

6           3.     On information and belief, Defendant HTC Corporation (“HTC Corp.”)  
7 is a Taiwanese corporation with a principle place of business at No. 23, Xinghua  
8 Road, Taoyuan District, Taoyuan, 330, Taiwan. HTC Corp. manufactures and  
9 provides to the United States a wide variety of products and services, including  
10 consumer electronics such as mobile phones and tablets.

11           4.     On information and belief, Defendant HTC America, Inc. (“HTC  
12 America”) is a Washington corporation with a principal place of business located at  
13 13920 SE Eastgate Way, Suite 400, Bellevue, Washington 98005. Upon information  
14 and belief, HTC America is a wholly-owned subsidiary of HTC Corp. Upon  
15 information and belief, HTC America is HTC Corp.’s United States business with  
16 respect to mobile phones and tablets, and HTC America imports, sells, offers for  
17 sale, and markets HTC Corp.’s mobile phones and tablets in the United States.

18           5.     Defendants HTC Corp. and HTC America are collectively referred to  
19 as “Defendants” or “HTC.” HTC is doing business in the United States and, more  
20 particularly, in the State of Washington and the Western District of Washington, by  
21 designing, marketing, making, using, selling, importing, and/or offering for sale  
22 products that infringe the patent claims involved in this action or by transacting other  
23 business in this District.

#### 24                               **JURISDICTION AND VENUE**

25           6.     This action arises under the patent laws of the United States, 35 U.S.C.  
26

1 § 1 *et seq.* This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331  
2 and 1338(a).

3 7. This Court has personal jurisdiction over each Defendant. Each  
4 Defendant has conducted and does conduct business within the State of Washington.  
5 Each Defendant has purposefully and voluntarily availed itself of the privileges of  
6 conducting business in the United States, the State of Washington, and the Western  
7 District of Washington by continuously and systematically placing goods into the  
8 stream of commerce through an established distribution channel with the expectation  
9 that they will be purchased by consumers in the Western District of Washington.  
10 Additionally, Defendants have previously submitted to this Court's jurisdiction by  
11 availing themselves of this court's authority and filing suit in this district. *See HTC*  
12 *Corp. and HTC Am., Inc. v. Telefonaktiebolaget LM Ericsson and Ericsson Inc.*, No.  
13 2:17-cv-00534 (W.D. Wash. Apr. 6, 2017). Plaintiff's causes of action arise directly  
14 from Defendants' business contacts and other activities in the State of Washington  
15 and the Western District of Washington. Additionally, HTC America is incorporated  
16 in Washington. Accordingly, this Court has personal jurisdiction over HTC America  
17 in that it resides in this District.

18 8. Upon information and belief, each Defendant has committed acts of  
19 infringement in this District giving rise to this action and does business in this  
20 District, including making sales and/or providing service and support for their  
21 respective customers in this District. Defendants purposefully and voluntarily sold  
22 one or more of their infringing products with the expectation that they would be  
23 purchased by consumers in this District. These infringing products have been and  
24 continue to be purchased by consumers in this District. Defendants have committed  
25 acts of patent infringement within the United States, the State of Washington, and  
26

1 the Western District of Washington.

2 9. Venue is proper as to HTC America under 28 U.S.C. § 1400(b) in that  
 3 HTC America is incorporated in Washington and, therefore, resides in this District.  
 4 *TC Heartland LLC v. Kraft Food Grps. Brands LLC*, 581 U.S. \_\_\_, 2017 WL  
 5 2216934, at \*8 (2017).

6 10. Venue is proper as to HTC Corp. under 28 U.S.C. § 1391(c)(3) in that  
 7 it is not a resident of the United States and may, therefore, be sued in any judicial  
 8 district. *Brunette Mach. Works, Ltd. v. Kockum Indus., Inc.*, 406 U.S. 706, 714  
 9 (1972).

10 11. Upon information and belief, HTC America is an agent of HTC Corp.  
 11 and is held out to the public as such. *See, e.g.*, [http://www.htc.com/us/terms](http://www.htc.com/us/terms/copyright/)  
 12 [/copyright/](http://www.htc.com/us/terms/copyright/) (last visited June 9, 2017) (naming HTC America as HTC Corp.’s  
 13 “Copyright Agent”); [https://www.theverge.com/2013/9/13/4728670/layoffs-hit-htc-](https://www.theverge.com/2013/9/13/4728670/layoffs-hit-htc-america-as-the-company-struggles-to-turn-itself-around)  
 14 [america-as-the-company-struggles-to-turn-itself-around](https://www.theverge.com/2013/9/13/4728670/layoffs-hit-htc-america-as-the-company-struggles-to-turn-itself-around) (last visited June 9, 2017)  
 15 (describing layoff at HTC’s America division with statement from HTC Corp.  
 16 regarding its decision as to the layoff).

17 12. Further, upon information and belief, HTC America operates under the  
 18 “HTC” trademark; offers, sells, services, and/or distributes only HTC products; and  
 19 coordinates its policies and operations with those of HTC Corp. to benefit and  
 20 primarily serve the interests of HTC Corp. Upon information and belief, for  
 21 consumers of the products accused in this Complaint, there is no substantive  
 22 difference between HTC America and HTC Corp.

23 13. Accordingly, venue is further proper as to HTC Corp. under 28 U.S.C.  
 24 § 1400(b) in that, upon information and belief, HTC Corp. has a regular and  
 25 established place of business in this District—namely, the place of business of its  
 26

1 subsidiary/agent, HTC America—and has committed acts of infringement herein.

2 **BACKGROUND**

3 14. The Industrial Technology Research Institute (“ITRI”) is a Taiwanese  
4 government- and industry-funded research and development center. In 2007,  
5 CyWee, which was started at ITRI, was formed. Its goal was to provide innovative  
6 motion-sensing technologies, such as those claimed in the patents-in-suit. Dr. Shun-  
7 Nan Liu and Chin-Lung Li, two of the inventors of the patents-in-suit, came to  
8 CyWee from ITRI. The third inventor, Zhou “Joe” Ye joined CyWee from private  
9 industry as its President and served as CEO from 2006 to 2016.

10 15. The inventors, Zhou Ye, Chin-Lung Li, and Shun-Nan Liou, conceived  
11 of the claims of the patents-in-suit—U.S. Patent No. 8,441,438 (the “’438 Patent”)  
12 and U.S. Patent No. 8,552,978 (the “’978 Patent”)—at CyWee Group Ltd., located  
13 at 3F, No. 28, Lane 128, Jing Ye Road, Taipei.

14 16. Several claims of the patents-in-suit are entitled to a priority date of at  
15 least January 6, 2010 based on U.S. Provisional Application Serial No. 61/292,558,  
16 filed January 6, 2010 (“Provisional Application”).

17 17. Before May 22, 2009, CyWee began working on the “JIL Game Phone  
18 Project” or “JIL Phone.” Before July 29, 2009, CyWee developed a solution for the  
19 JIL Phone that practiced several claims of the ’438 Patent. Those claims were  
20 diligently and constructively reduced to practice thereafter through the filing of the  
21 Provisional Application and were diligently and actually reduced to practice as  
22 discussed below. Accordingly, CyWee is entitled to a priority date of at least July  
23 29, 2009 for several claims of the ’438 Patent.

24 18. The JIL Phone was reduced to practice by at least September 25, 2009.  
25 The JIL Phone practiced several claims of both patents-in-suit. Accordingly, CyWee  
26

1 is entitled to a priority date of at least September 25, 2009 for several claims of the  
2 patents-in-suit.

3 **PATENT INFRINGEMENT OF U.S. PATENT NO. 8,441,438**

4 19. Plaintiff repeats and re-alleges each and every allegation of paragraphs  
5 1-18 as though fully set forth herein.

6 20. The '438 Patent, titled "3D Pointing Device and Method for  
7 Compensating Movement Thereof," was duly and legally issued by the United States  
8 Patent and Trademark Office on May 14, 2013 to CyWee Group Limited, as assignee  
9 of named inventors Zhou Ye, Chin-Lung Li, and Shun-Nan Liou.

10 21. CyWee is the owner of all right, title, and interest in and to the '438  
11 Patent with full right to bring suit to enforce the patent, including the right to recover  
12 for past infringement damages.

13 22. The '438 Patent claims, *inter alia*, a machine capable of detecting,  
14 measuring, and calculating the movements and rotations of the machine—utilizing,  
15 *inter alia*, a six-axis motion sensor module, a data transmitting unit, and a computing  
16 processor in one or more claimed configurations—and methods for measuring and  
17 calculating the movements and rotations of a device within a spatial reference frame.  
18 The Declaration of Nicholas Gans, Ph.D. (the "Gans Decl.") regarding the nature of  
19 the '438 Patent and the '978 Patent and the technologies claimed therein is attached  
20 hereto as "Exhibit C" and is incorporated by reference as if fully set forth herein.

21 23. The '438 Patent is directed to useful and novel particular embodiments  
22 and methods for detecting, measuring, and calculating motion within a spatial  
23 reference frame. *See* Gans. Decl. ¶ 16. Specifically, the '438 Patent claims a novel  
24 system involving multiple sensor types and a novel method for using those sensors  
25 to overcome the limitations of the individual sensor types in accurately determining  
26

1 the orientation of a device. *See id.* ¶¶ 13-26. The '438 Patent is not intended to, and  
2 does not, claim every possible means of detecting, measuring, and calculating  
3 motion within a spatial reference frame. There are alternative methods to  
4 determining orientation within a spatial reference frame, such as systems and  
5 methods utilizing computer vision algorithms and/or cameras. *See id.* ¶¶ 23-26.  
6 Accordingly, the '438 Patent is not directed to, and does not claim, the mere concept  
7 of motion sensing or of detecting, measuring, and calculating motion within a spatial  
8 reference frame.

9       24. Each and every claim of the '438 Patent is valid and enforceable and  
10 each enjoys a statutory presumption of validity separate, apart, and in addition to the  
11 statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. §  
12 282.

13       25. CyWee is informed and believes, and thereupon alleges, that HTC has  
14 been, and is currently, directly and/or indirectly infringing one or more claims of the  
15 '438 Patent in violation of 35 U.S.C. § 271, including as stated below.

16       26. CyWee is informed and believes, and thereupon alleges, that HTC has  
17 directly infringed, literally and/or under the doctrine of equivalents, and will  
18 continue to directly infringe claims of the '438 Patent by making, using, selling,  
19 offering to sell, and/or importing into the United States products that embody or  
20 practice the apparatus and/or method covered by one or more claims of the '438  
21 Patent, including but not limited to Defendants' following devices:  
22  
23  
24  
25  
26





HTC One M9



HTC One A9



HTC 10



HTC Bolt



HTC U Ultra

27. The foregoing devices are collectively referred to as the “’438 Accused Products” and include the below specifications and features.

28. On information and belief, HTC indirectly infringes the ’438 Patent by inducing others to infringe one or more claims of the ’438 Patent through sale and/or use of the ’438 Accused Products. On information and belief, at least as a result of



1 the filing of this action, HTC is aware of the '438 Patent; is aware that its actions  
 2 with regards to distributors, resellers, and/or end users of the '438 Accused Products  
 3 would induce infringement; and despite such awareness will continue to take active  
 4 steps—such as, creating and disseminating the '438 Accused Products, and product  
 5 manuals, instructions, promotional and marketing materials, and/or technical  
 6 materials to distributors, resellers, and end users—encouraging other's infringement  
 7 of the '438 Patent with the specific intent to induce such infringement.

8 29. The HTC 10 includes a display screen.

9 30. The HTC 10 includes a housing.

10 31. The HTC 10 includes a 3-axis accelerometer.

11 32. The HTC 10 includes a 3-axis gyroscope.

12 33. The HTC 10 includes at least one printed circuit board ("PCB").

13 34. The HTC 10 includes a 3-axis accelerometer attached to a PCB.

14 35. The HTC 10 includes a 3-axis gyroscope attached to a PCB.

15 36. The HTC 10 includes a 3-axis accelerometer that is capable of  
 16 measuring accelerations.

17 37. The HTC 10 includes a 3-axis gyroscope that is capable of measuring  
 18 rotation rates.

19 38. The HTC 10 runs an Android™ operating system.

20 39. The HTC 10 includes a 3-axis accelerometer that is capable of  
 21 measuring accelerations using a "Sensor Coordinate System" as described in the  
 22 Android™ developer library. See [https://developer.android.com/guide/topics](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
 23 [/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html) (describing "Sensor Coordinate System").

24 40. The HTC 10 includes a 3-axis gyroscope that is capable of measuring  
 25 rotation rates using a "Sensor Coordinate System."  
 26

1 41. The HTC 10 includes a processor that is capable of processing data  
2 associated with measurement from a 3-axis accelerometer.

3 42. The HTC 10 includes a processor that is capable of processing data  
4 associated with measurement from a 3-axis gyroscope.

5 43. The Android™ operating system that runs on the HTC 10 uses the  
6 measurement from a 3-axis accelerometer included in the device.

7 44. The Android™ operating system that runs on the HTC 10 uses the  
8 measurement from a 3-axis gyroscope included in the device.

9 45. The Android™ operating system that runs on the HTC 10 uses the  
10 measurement from a 3-axis accelerometer and the measurement from a 3-axis  
11 gyroscope to calculate an attitude of the device.

12 46. The HTC One M9 includes a display screen.

13 47. The HTC One M9 includes a housing.

14 48. The HTC One M9 includes a 3-axis accelerometer.

15 49. The HTC One M9 includes a 3-axis gyroscope.

16 50. The HTC One M9 includes at least one PCB.

17 51. The HTC One M9 includes a 3-axis accelerometer attached to a PCB.

18 52. The HTC One M9 includes a 3-axis gyroscope attached to a PCB.

19 53. The HTC One M9 includes a 3-axis accelerometer that is capable of  
20 measuring accelerations.

21 54. The HTC One M9 includes a 3-axis gyroscope that is capable of  
22 measuring rotation rates.

23 55. The HTC One M9 runs an Android™ operating system.

24 56. The HTC One M9 includes a 3-axis accelerometer that is capable of  
25 measuring accelerations using a “Sensor Coordinate System” as described in the  
26

1 Android™ developer library. See [https://developer.android.com/guide/topics](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
 2 [/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html) (describing “Sensor Coordinate System”).

3 57. The HTC One M9 includes a 3-axis gyroscope that is capable of  
 4 measuring rotation rates using a “Sensor Coordinate System.”

5 58. The HTC One M9 includes a processor that is capable of processing  
 6 data associated with measurement from a 3-axis accelerometer.

7 59. The HTC One M9 includes a processor that is capable of processing  
 8 data associated with measurement from a 3-axis gyroscope.

9 60. The Android™ operating system that runs on the HTC One M9 uses  
 10 the measurement from a 3-axis accelerometer included in the device.

11 61. The Android™ operating system that runs on the HTC One M9 uses  
 12 the measurement from a 3-axis gyroscope included in the device.

13 62. The Android™ operating system that runs on the HTC One M9 uses  
 14 the measurement from a 3-axis accelerometer and the measurement from a 3-axis  
 15 gyroscope to calculate an attitude of the device.

16 63. The HTC One A9 includes a display screen.

17 64. The HTC One A9 includes a housing.

18 65. The HTC One A9 includes a 3-axis accelerometer.

19 66. The HTC One A9 includes a 3-axis gyroscope.

20 67. The HTC One A9 includes at least one PCB.

21 68. The HTC One A9 includes a 3-axis accelerometer attached to a PCB.

22 69. The HTC One A9 includes a 3-axis gyroscope attached to a PCB.

23 70. The HTC One A9 includes a 3-axis accelerometer that is capable of  
 24 measuring accelerations.

25 71. The HTC One A9 includes a 3-axis gyroscope that is capable of  
 26

1 measuring rotation rates.

2 72. The HTC One A9 runs an Android™ operating system.

3 73. The HTC One A9 includes a 3-axis accelerometer that is capable of  
4 measuring accelerations using a “Sensor Coordinate System” as described in the  
5 Android™ developer library. See [https://developer.android.com/guide/topics](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
6 [/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html) (describing “Sensor Coordinate System”).

7 74. The HTC One A9 includes a 3-axis gyroscope that is capable of  
8 measuring rotation rates using a “Sensor Coordinate System.”

9 75. The HTC One A9 includes a processor that is capable of processing  
10 data associated with measurement from a 3-axis accelerometer.

11 76. The HTC One A9 includes a processor that is capable of processing  
12 data associated with measurement from a 3-axis gyroscope.

13 77. The Android™ operating system that runs on the HTC One A9 uses the  
14 measurement from a 3-axis accelerometer included in the device.

15 78. The Android™ operating system that runs on the HTC One A9 uses the  
16 measurement from a 3-axis gyroscope included in the device.

17 79. The Android™ operating system that runs on the HTC One A9 uses the  
18 measurement from a 3-axis accelerometer and the measurement from a 3-axis  
19 gyroscope to calculate an attitude of the device.

20 80. The HTC Bolt includes a display screen.

21 81. The HTC Bolt includes a housing.

22 82. The HTC Bolt includes a 3-axis accelerometer.

23 83. The HTC Bolt includes a 3-axis gyroscope.

24 84. The HTC Bolt includes at least one PCB.

25 85. The HTC Bolt includes a 3-axis accelerometer attached to a PCB.

86. The HTC Bolt includes a 3-axis gyroscope attached to a PCB.

87. The HTC Bolt includes a 3-axis accelerometer that is capable of measuring accelerations.

88. The HTC Bolt includes a 3-axis gyroscope that is capable of measuring rotation rates.

89. The HTC Bolt runs an Android™ operating system.

90. The HTC Bolt includes a 3-axis accelerometer that is capable of measuring accelerations using a “Sensor Coordinate System” as described in the Android™ developer library. See [https://developer.android.com/guide/topics/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html) (describing “Sensor Coordinate System”).

91. The HTC Bolt includes a 3-axis gyroscope that is capable of measuring rotation rates using a “Sensor Coordinate System.”

92. The HTC Bolt includes a processor that is capable of processing data associated with measurement from a 3-axis accelerometer.

93. The HTC Bolt includes a processor that is capable of processing data associated with measurement from a 3-axis gyroscope.

94. The Android™ operating system that runs on the HTC Bolt uses the measurement from a 3-axis accelerometer included in the device.

95. The Android™ operating system that runs on the HTC Bolt uses the measurement from a 3-axis gyroscope included in the device.

96. The Android™ operating system that runs on the HTC Bolt uses the measurement from a 3-axis accelerometer and the measurement from a 3-axis gyroscope to calculate an attitude of the device.

97. The HTC U Ultra includes a display screen.

98. The HTC U Ultra includes a housing.

1 99. The HTC U Ultra includes a 3-axis accelerometer.

2 100. The HTC U Ultra includes a 3-axis gyroscope.

3 101. The HTC U Ultra includes at least one PCB.

4 102. The HTC U Ultra includes a 3-axis accelerometer attached to a PCB.

5 103. The HTC U Ultra includes a 3-axis gyroscope attached to a PCB.

6 104. The HTC U Ultra includes a 3-axis accelerometer that is capable of  
7 measuring accelerations.

8 105. The HTC U Ultra includes a 3-axis gyroscope that is capable of  
9 measuring rotation rates.

10 106. The HTC U Ultra runs an Android™ operating system.

11 107. The HTC U Ultra includes a 3-axis accelerometer that is capable of  
12 measuring accelerations using a “Sensor Coordinate System” as described in the  
13 Android™ developer library. See [https://developer.android.com](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
14 [/guide/topics/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html) (describing “Sensor Coordinate  
15 System”).

16 108. The HTC U Ultra includes a 3-axis gyroscope that is capable of  
17 measuring rotation rates using a “Sensor Coordinate System.”

18 109. The HTC U Ultra includes a processor that is capable of processing data  
19 associated with measurement from a 3-axis accelerometer.

20 110. The HTC U Ultra includes a processor that is capable of processing data  
21 associated with measurement from a 3-axis gyroscope.

22 111. The Android™ operating system that runs on the HTC U Ultra uses the  
23 measurement from a 3-axis accelerometer included in the device.

24 112. The Android™ operating system that runs on the HTC U Ultra uses the  
25 measurement from a 3-axis gyroscope included in the device.  
26

1           113. The Android™ operating system that runs on the HTC U Ultra uses the  
2 measurement from a 3-axis accelerometer and the measurement from a 3-axis  
3 gyroscope to calculate an attitude of the device.

4           114. HTC's actions with regards to distributors, resellers, and/or end users  
5 of the '438 Accused Products induce infringement of the patent by others, and HTC  
6 is aware that its actions induce infringement. Despite such awareness, HTC  
7 continues to take active steps—such as creating and disseminating the '438 Accused  
8 Products, and product manuals, instructions, support materials, promotional and  
9 marketing materials, and/or technical materials to distributors, resellers, and end  
10 users—encouraging others to infringe the '438 Patent with the specific intent to  
11 induce such infringement.

12           115. HTC provides manuals and instructions for the '438 Accused Products  
13 and/or provides instructional and support materials on its website that teach and  
14 instruct its customers to operate those products in ways that practice the claimed  
15 invention. For instance, HTC provides user guides for each of the Accused Products,  
16 and those user guides describe how to use HTC's "Motion Launch" feature, which  
17 is a feature that gives users the ability to use motion combined with other gestures  
18 to perform various device functions.<sup>1</sup> See Exhibit D, p. 40-43 (HTC One M9 User  
19 Guide); Exhibit E, p. 42-45 (HTC One A9 User Guide); Exhibit F, p. 36-39 (HTC  
20 10 User Guide); Exhibit G, p. 91-95 (HTC Bolt User Guide); Exhibit H, p. 44-47  
21 (HTC U Ultra User Guide); Exhibit I, p. 45-48 (HTC U11 User Guide); Exhibit J, p.  
22 44-47 (HTC U11 life User Guide). According to HTC's user guides for the Accused

23 \_\_\_\_\_  
24 <sup>1</sup> Two of the Accused Products were not specifically identified in the non-exclusive list of  
25 products in CyWee's original complaint, but CyWee has identified them in its infringement  
26 contentions. The first, the HTC U11, was released on June 9, 2017, which was seven days prior  
to CyWee's original complaint. The second, the HTC U11 Life, was released after CyWee's  
original complaint was filed.



1 Products, the Motion Launch feature allows for the use of “a combination of simple  
 2 gestures,” including motion gestures, as an alternate means of performing various  
 3 smartphone functions. *Id.* Among other things, the user guides teach uses of the  
 4 Motion Launch feature which depend upon device orientation, such as waking up  
 5 and unlocking the screen by lifting the device to portrait orientation and tapping the  
 6 screen, waking the device to the home widget panel, raising to wake the device to  
 7 “HTC BlinkFeed,” and using motions to activate the device’s camera. *Id.* HTC’s  
 8 manuals also instruct users to troubleshoot Motion Launch errors by using the  
 9 correct motion gesture to properly orient the device into the appropriate position to  
 10 launch the desired feature. *Id.*

11 116. In addition to the Motion Launch features, HTC’s user guides for the  
 12 Accused Products also teach consumers how to use optional “motion gestures” to  
 13 control certain functions of each device. *See* Exhibit D, p. 31-32; Exhibit E, p. 33-  
 14 34; Exhibit F, p. 26-27; Exhibit H, p. 34-35; Exhibit I, p. 35-36 (HTC U11 User  
 15 Guide); Exhibit J, p. 34-35. For instance, users are instructed on how to utilize a  
 16 device’s orientation to “lift the phone to auto answer a call,” and how to “turn the  
 17 phone over to mute it” if the phone is facing up when a call comes in, and how to  
 18 use motion gestures to control the ring volume for a call. *Id.* All of these advertised  
 19 features require determination of the device’s orientation and track the claims of the  
 20 ’438 Patent.

21 117. HTC’s online customer support documents also instruct consumers on  
 22 methods for using the Motion Launch features as well as motion gestures for the  
 23 Accused Products. *See* Exhibit K (HTC One M9 Motion Launch); Exhibit L (HTC  
 24 One M9 Motion Gestures); Exhibit M (HTC One A9 Motion Launch); Exhibit N  
 25 (HTC One A9 Motion Gestures); Exhibit O (HTC 10 Motion Launch); Exhibit P  
 26

(HTC 10 Motion Gestures); Exhibit Q (HTC Bolt Motion Launch); Exhibit R (HTC Bolt Motion Gestures); Exhibit S (HTC U Ultra Motion Launch); Exhibit T (HTC U Ultra Motion Gestures); Exhibit U (HTC U11 Motion Launch); Exhibit V (HTC U11 Motion Gestures); Exhibit W (HTC U11 life Motion Launch); Exhibit X (HTC U11 life Motion Gestures). The documents describe how Motion Launch enables users to use a device's orientation to wake the device up to the lock screen, to unlock the device, to wake the device to the home widget panel, to wake the device to "HTC BlinkFeed," and to use motion sensing to launch the device camera. *Id.* The documents describe how to use motion sensing technology to lift the device in order to answer a call, to flip the device over to mute a call, and to raise the device in order to lower ring volume. *Id.* HTC has also released a tutorial video, linked to its support page, which demonstrates the functionality of the Motion Launch feature. *See* Exhibit Y (Screenshot of HTC One M8 Motion Launch Tutorial video); *see also* <https://www.youtube.com/watch?v=1cXiem8zc-g> (last visited Mar. 8, 2018). And HTC's online FAQ page provides instructions to users which confirm that certain motion gestures are required in order to utilize the Motion Launch functionality. *See* Exhibit Z (HTC FAQ – Why is my phone not responding to Motion Launch gestures?). These instructional and support materials, among others, demonstrate that HTC actively induces users to operate their products in ways that practice the claimed invention. Notably, the HTC U11 Life, and its corresponding User Guide and support materials, were not released until November 3, 2017, almost five months after the initial filing of this lawsuit. *See* <http://bgr.com/2017/11/02/htc-u11-plus-release-date-u11-life-release-date-us/> (last visited Mar. 8, 2018). HTC has continued to instruct end-users of the Accused Products to operate those products in ways that practice the claimed invention even after being put on actual notice of the

1 infringement of the '438 Patent. CyWee believes that discovery, which is ongoing,  
 2 will reveal even more facts demonstrating HTC's induced infringement of the '438  
 3 Patent.

4 118. CyWee adopts, and incorporates by reference, as if fully stated herein,  
 5 the attached claim chart for claim 14 of the '438 Patent, which is attached hereto as  
 6 Exhibit A. The claim chart describes and demonstrates how HTC infringes the '438  
 7 Patent. In addition, CyWee alleges that HTC infringes one or more additional claims  
 8 of the '438 Patent in a similar manner.

9 119. Defendants' acts of infringement have caused and will continue to  
 10 cause substantial and irreparable damage to CyWee.

11 120. As a result of Defendants' infringement of the '438 Patent, CyWee has  
 12 been damaged. CyWee is, therefore, entitled to damages pursuant to 35 U.S.C. § 284  
 13 in an amount that presently cannot be pled but that will be determined at trial.

14 **PATENT INFRINGEMENT OF U.S. PATENT NO. 8,552,978**

15 121. Plaintiff repeats and re-alleges each and every allegation of paragraphs  
 16 1-120 as though fully set forth herein.

17 122. The '978 Patent, titled "3D Pointing Device and Method for  
 18 Compensating Rotations of the 3D Pointing Device Thereof," was duly and legally  
 19 issued by the United States Patent and Trademark Office on October 8, 2013 to  
 20 CyWee Group Limited, as assignee of named inventors Zhou Ye, Chin-Lung Li, and  
 21 Shun-Nan Liou.

22 123. CyWee is the owner of all right, title, and interest in and to the '978  
 23 Patent with full right to bring suit to enforce the patent, including the right to recover  
 24 for past infringement damages.

25 124. The '978 Patent claims, *inter alia*, a machine capable of detecting,  
 26

1 measuring, and calculating the movements and rotations of the machine—utilizing,  
2 *inter alia*, a nine-axes motion sensor module and two computing processors in one  
3 or more claimed configurations—and methods for measuring and calculating the  
4 movements and rotations of a device within a spatial reference frame. *See, generally*,  
5 Gans Decl., p. 2-4, ¶¶ 8-12.

6 125. The '978 Patent is directed to useful and novel particular embodiments  
7 and methods for detecting, measuring, and calculating motion within a spatial  
8 reference frame. *Id.* ¶ 16. Specifically, the '978 Patent claims a novel system  
9 involving multiple sensor types and a novel method for using those sensors to  
10 overcome the limitations of the individual sensor types in accurately determining the  
11 orientation of a device. *See id.* ¶¶ 13-26. The '978 Patent is not intended to, and does  
12 not, claim every possible means of detecting, measuring, and calculating motion  
13 within a spatial reference frame. There are alternative methods to determining  
14 orientation within a spatial reference frame, such as systems and methods utilizing  
15 computer vision algorithms and/or cameras. *See id.* ¶¶ 23-26. Accordingly, the '978  
16 Patent is not directed to, and does not claim, the mere concept of motion sensing or  
17 of detecting, measuring, and calculating motion within a spatial reference frame.

18 126. Each and every claim of the '978 Patent is valid and enforceable and  
19 each enjoys a statutory presumption of validity separate, apart, and in addition to the  
20 statutory presumption of validity enjoyed by every other of its claims. 35 U.S.C. §  
21 282.

22 127. CyWee is informed and believes, and thereupon alleges, that HTC has  
23 been, and is currently, directly and/or indirectly infringing one or more claims of the  
24 '978 Patent in violation of 35 U.S.C. § 271, including as stated below.

25 128. CyWee is informed and believes, and thereupon alleges, that HTC has  
26

1 directly infringed, literally and/or under the doctrine of equivalents, and will  
 2 continue to directly infringe claims of the '978 Patent by making, using, selling,  
 3 offering to sell, and/or importing into the United States products that embody or  
 4 practice the apparatus and/or method covered by one or more claims of the '978  
 5 Patent, including but not limited to Defendants' following devices:



HTC One M9



HTC One A9



HTC 10



HTC Bolt



HTC U Ultra

1        129. The foregoing devices are collectively referred to as the “’978 Accused  
2 Products” and include the below specifications and features.

3        130. On information and belief, HTC indirectly infringes the ’978 Patent by  
4 inducing others to infringe one or more claims of the ’978 Patent through sale and/or  
5 use of the ’978 Accused Products. On information and belief, at least as a result of  
6 the filing of this action, HTC is aware of the ’978 Patent; is aware that its actions  
7 with regards to distributors, resellers, and/or end users of the ’978 Accused Products  
8 would induce infringement; and despite such awareness will continue to take active  
9 steps—such as, creating and disseminating the ’978 Accused Products, and product  
10 manuals, instructions, promotional and marketing materials, and/or technical  
11 materials to distributors, resellers, and end users—encouraging other’s infringement  
12 of the ’978 Patent with the specific intent to induce such infringement.

13        131. The HTC One M9 includes a 3-axis geomagnetic sensor.

14        132. The HTC One M9 includes a 3-axis geomagnetic sensor that is capable  
15 of measuring a geomagnetic field.

16        133. The HTC One M9 includes a 3-axis geomagnetic field sensor to  
17 measure a geomagnetic field using a “Sensor Coordinate System.” See  
18 [https://developer.android.com/guide/topics/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
19 (describing “Sensor Coordinate System”).

20        134. The Android operating system that runs on the HTC One M9 uses the  
21 measurement from a 3-axis geomagnetic sensor included in the device.

22        135. The Android operating system that runs on the HTC One M9 uses the  
23 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
24 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
25 an attitude of the device.  
26

1        136. The Android operating system that runs on the HTC One M9 uses the  
2 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
3 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
4 an attitude of the device that can be represented by an azimuth angle, a pitch angle,  
5 and a roll angle.

6        137. The HTC One M9 has the ability to directly control apps by moving or  
7 rotating the device (for example, racing game apps).

8        138. The HTC One M9 has the ability to run apps that can provide  
9 information based on the direction your device is facing, such as a map or navigation  
10 app.

11        139. The HTC One A9 includes a 3-axis geomagnetic sensor.

12        140. The HTC One A9 includes a 3-axis geomagnetic sensor that is capable  
13 of measuring a geomagnetic field.

14        141. The HTC One A9 includes a 3-axis geomagnetic field sensor to  
15 measure a geomagnetic field using a “Sensor Coordinate System.” See  
16 [https://developer.android.com/guide/topics/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
17 (describing “Sensor Coordinate System”).

18        142. The Android operating system that runs on the HTC One A9 uses the  
19 measurement from a 3-axis geomagnetic sensor included in the device.

20        143. The Android operating system that runs on the HTC One A9 uses the  
21 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
22 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
23 an attitude of the device.

24        144. The Android operating system that runs on the HTC One A9 uses the  
25 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
26



1 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
2 an attitude of the device that can be represented by an azimuth angle, a pitch angle,  
3 and a roll angle.

4 145. The HTC One A9 has the ability to directly control apps by moving or  
5 rotating the device (for example, racing game apps).

6 146. The HTC One A9 has the ability to run apps that can provide  
7 information based on the direction your device is facing, such as a map or navigation  
8 app.

9 147. The HTC 10 includes a 3-axis geomagnetic sensor.

10 148. The HTC 10 includes a 3-axis geomagnetic sensor that is capable of  
11 measuring a geomagnetic field.

12 149. The HTC 10 includes a 3-axis geomagnetic field sensor to measure a  
13 geomagnetic field using a “Sensor Coordinate System.” See  
14 [https://developer.android.com/guide/topics/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
15 (describing “Sensor Coordinate System”).

16 150. The Android operating system that runs on the HTC 10 uses the  
17 measurement from a 3-axis geomagnetic sensor included in the device.

18 151. The Android operating system that runs on the HTC 10 uses the  
19 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
20 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
21 an attitude of the device.

22 152. The Android operating system that runs on the HTC 10 uses the  
23 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
24 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
25 an attitude of the device that can be represented by an azimuth angle, a pitch angle,  
26

1 and a roll angle.

2 153. The HTC 10 has the ability to directly control apps by moving or  
3 rotating the device (for example, racing game apps).

4 154. The HTC 10 has the ability to run apps that can provide information  
5 based on the direction your device is facing, such as a map or navigation app.

6 155. The HTC Bolt includes a 3-axis geomagnetic sensor.

7 156. The HTC Bolt includes a 3-axis geomagnetic sensor that is capable of  
8 measuring a geomagnetic field.

9 157. The HTC Bolt includes a 3-axis geomagnetic field sensor to measure a  
10 geomagnetic field using a “Sensor Coordinate System.” *See*  
11 [https://developer.android.com/guide/topics/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
12 (describing “Sensor Coordinate System”).

13 158. The Android operating system that runs on the HTC Bolt uses the  
14 measurement from a 3-axis geomagnetic sensor included in the device.

15 159. The Android operating system that runs on the HTC Bolt uses the  
16 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
17 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
18 an attitude of the device.

19 160. The Android operating system that runs on the HTC Bolt uses the  
20 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
21 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
22 an attitude of the device that can be represented by an azimuth angle, a pitch angle,  
23 and a roll angle.

24 161. The HTC Bolt has the ability to directly control apps by moving or  
25 rotating the device (for example, racing game apps).  
26

1           162. The HTC Bolt has the ability to run apps that can provide information  
2 based on the direction your device is facing, such as a map or navigation app.

3           163. The HTC Ultra U includes a 3-axis geomagnetic sensor.

4           164. The HTC Ultra U includes a 3-axis geomagnetic sensor that is capable  
5 of measuring a geomagnetic field.

6           165. The HTC Ultra U includes a 3-axis geomagnetic field sensor to measure  
7 a geomagnetic field using a “Sensor Coordinate System.” See  
8 [https://developer.android.com/guide/topics/sensors/sensors\\_overview.html](https://developer.android.com/guide/topics/sensors/sensors_overview.html)  
9 (describing “Sensor Coordinate System”).

10          166. The Android operating system that runs on the HTC Ultra U uses the  
11 measurement from a 3-axis geomagnetic sensor included in the device.

12          167. The Android operating system that runs on the HTC Ultra U uses the  
13 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
14 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
15 an attitude of the device.

16          168. The Android operating system that runs on the HTC Ultra U uses the  
17 measurement from a 3-axis accelerometer, the measurement from a 3-axis  
18 geomagnetic field sensor, and the measurement from a 3-axis gyroscope to calculate  
19 an attitude of the device that can be represented by an azimuth angle, a pitch angle,  
20 and a roll angle.

21          169. The HTC Ultra U has the ability to directly control apps by moving or  
22 rotating the device (for example, racing game apps).

23          170. The HTC Ultra U has the ability to run apps that can provide  
24 information based on the direction your device is facing, such as a map or navigation  
25 app.  
26

171. HTC's actions with regards to distributors, resellers, and/or end users of the '978 Accused Products induce infringement of the patent by others, and HTC is aware that its actions induce infringement. Despite such awareness, HTC continues to take active steps—such as creating and disseminating the '978 Accused Products, and product manuals, instructions, support materials, promotional and marketing materials, and/or technical materials to distributors, resellers, and end users—encouraging others to infringe the '978 Patent with the specific intent to induce such infringement.

172. HTC provides manuals and instructions for the '978 Accused Products and/or provides instructional and support materials on its website that teach and instruct its customers to operate those products in ways that practice the claimed invention. For instance, HTC provides user guides for each of the Accused Products, and those user guides describe how to use HTC's "Motion Launch" feature, which is a feature that gives users the ability to use motion combined with other gestures to perform various device functions.<sup>2</sup> See Exhibit D, p. 40-43 (HTC One M9 User Guide); Exhibit E, p. 42-45 (HTC One A9 User Guide); Exhibit F, p. 36-39 (HTC 10 User Guide); Exhibit G, p. 91-95 (HTC Bolt User Guide); Exhibit H, p. 44-47 (HTC U Ultra User Guide); Exhibit I, p. 45-48 (HTC U11 User Guide); Exhibit J, p. 44-47 (HTC U11 life User Guide). According to HTC's user guides for the Accused Products, the Motion Launch feature allows for the use of "a combination of simple gestures," including motion gestures, as an alternate means of performing various smartphone functions. *Id.* Among other things, the user guides teach uses of the

<sup>2</sup> Two of the Accused Products were not specifically identified in the non-exclusive list of products in CyWee's original complaint, but CyWee has identified them in its infringement contentions. The first, the HTC U11, was released on June 9, 2017, which was seven days prior to CyWee's original complaint. The second, the HTC U11 Life, was released after CyWee's original complaint was filed.

1 Motion Launch feature which depend upon device orientation, such as waking up  
 2 and unlocking the screen by lifting the device to portrait orientation and tapping the  
 3 screen, waking the device to the home widget panel, raising to wake the device to  
 4 “HTC BlinkFeed,” and using motions to activate the device’s camera. *Id.* HTC’s  
 5 manuals also instruct users to troubleshoot Motion Launch errors by using the  
 6 correct motion gesture to properly orient the device into the appropriate position to  
 7 launch the desired feature. *Id.*

8       173. In addition to the Motion Launch features, HTC’s user guides for the  
 9 Accused Products also teach consumers how to use optional “motion gestures” to  
 10 control certain functions of each device. *See* Exhibit D, p. 31-32; Exhibit E, p. 33-  
 11 34; Exhibit F, p. 26-27; Exhibit H, p. 34-35; Exhibit I, p. 35-36 (HTC U11 User  
 12 Guide); Exhibit J, p. 34-35. For instance, users are instructed on how to utilize a  
 13 device’s orientation to “lift the phone to auto answer a call,” and how to “turn the  
 14 phone over to mute it” if the phone is facing up when a call comes in, and how to  
 15 use motion gestures to control the ring volume for a call. *Id.* All of these advertised  
 16 features require determination of the device’s orientation and track the claims of the  
 17 ’978 Patent.

18       174. HTC’s online customer support documents also instruct consumers on  
 19 methods for using the Motion Launch features as well as motion gestures for the  
 20 Accused Products. *See* Exhibit K (HTC One M9 Motion Launch); Exhibit L (HTC  
 21 One M9 Motion Gestures); Exhibit M (HTC One A9 Motion Launch); Exhibit N  
 22 (HTC One A9 Motion Gestures); Exhibit O (HTC 10 Motion Launch); Exhibit P  
 23 (HTC 10 Motion Gestures); Exhibit Q (HTC Bolt Motion Launch); Exhibit R (HTC  
 24 Bolt Motion Gestures); Exhibit S (HTC U Ultra Motion Launch); Exhibit T (HTC  
 25 U Ultra Motion Gestures); Exhibit U (HTC U11 Motion Launch); Exhibit V (HTC  
 26

U11 Motion Gestures); Exhibit W (HTC U11 life Motion Launch); Exhibit X (HTC U11 life Motion Gestures). The documents describe how Motion Launch enables users to use a device's orientation to wake the device up to the lock screen, to unlock the device, to wake the device to the home widget panel, to wake the device to "HTC BlinkFeed," and to use motion sensing to launch the device camera. *Id.* The documents describe how to use motion sensing technology to lift the device in order to answer a call, to flip the device over to mute a call, and to raise the device in order to lower ring volume. *Id.* HTC has also released a tutorial video, linked to its support page, which demonstrates the functionality of the Motion Launch feature. *See* Exhibit Y (Screenshot of HTC One M8 Motion Launch Tutorial video); *see also* <https://www.youtube.com/watch?v=1cXiem8zc-g> (last visited Mar. 8, 2018). And HTC's online FAQ page provides instructions to users which confirm that certain motion gestures are required in order to utilize the Motion Launch functionality. *See* Exhibit Z (HTC FAQ – Why is my phone not responding to Motion Launch gestures?). These instructional and support materials, among others, demonstrate that HTC actively induces users to operate their products in ways that practice the claimed invention. Notably, the HTC U11 Life, and its corresponding User Guide and support materials, were not released until November 3, 2017, almost five months after the initial filing of this lawsuit. *See* <http://bgr.com/2017/11/02/htc-u11-plus-release-date-u11-life-release-date-us/> (last visited Mar. 8, 2018). HTC has continued to instruct end-users of the Accused Products to operate those products in ways that practice the claimed invention even after being put on actual notice of the infringement of the '978 Patent. CyWee believes that discovery, which is ongoing, will reveal even more facts demonstrating HTC's induced infringement of the '978 Patent.

1 175. CyWee adopts, and incorporates by reference, as if fully stated herein,  
 2 the attached claim chart for claim 10 of the '978 Patent, which is attached hereto as  
 3 Exhibit B. The claim chart describes and demonstrates how HTC infringes the '978  
 4 Patent. In addition, CyWee alleges that HTC infringes one or more additional claims  
 5 of the '978 Patent in a similar manner.

6 176. Defendants' acts of infringement have caused and will continue to  
 7 cause substantial and irreparable damage to CyWee.

8 177. As a result of Defendants' infringement of the '978 Patent, CyWee has  
 9 been damaged. CyWee is, therefore, entitled to damages pursuant to 35 U.S.C. § 284  
 10 in an amount that presently cannot be pled but that will be determined at trial.

11 **PRAYER FOR RELIEF**

12 **WHEREFORE, PREMISES CONSIDERED**, Plaintiff prays for entry of  
 13 judgment against Defendants as follows:

14 A. A judgment that Defendants have infringed and continue to infringe the  
 15 '438 Patent and '978 Patent, directly and/or indirectly, as alleged herein;

16 B. That Defendants provide to CyWee an accounting of all gains, profits,  
 17 and advantages derived by Defendants' infringement of the '438 Patent and '978  
 18 Patent, and that CyWee be awarded damages adequate to compensate them for the  
 19 wrongful infringement by Defendants, in accordance with 35 U.S.C. § 284;

20 C. That CyWee be awarded any other supplemental damages and interest  
 21 on all damages, including, but not limited to, attorney fees available under 35 U.S.C.  
 22 § 285;

23 D. That the Court permanently enjoin Defendants and all those in privity  
 24 with Defendants from making, having made, selling, offering for sale, distributing,  
 25 and/or using products that infringe the '438 Patent and '978 Patent, including the  
 26



1 '438 Accused Products and/or '978 Accused Products, in the United States; and

2 E. That CyWee be awarded such other and further relief and all remedies  
3 available at law.

4 **DEMAND FOR JURY TRIAL**

5 Pursuant to Federal Rule of Civil Procedure 38(b), CyWee hereby demands a  
6 trial by jury on all issues triable to a jury.

1 Dated: March 9, 2018

Respectfully submitted,

2 /s/ Carmen E. Bremer

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21 \* Admitted *pro hac vice*

22 Counsel for Plaintiff  
23 CYWEE GROUP LTD.  
24  
25  
26

**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2018, I presented this Plaintiff's Second Amended Complaint for Patent Infringement to the Clerk of the Court for filing and uploading to the CM/ECF system, which will send notification of such filing to all counsel of record.

Dated: March 9, 2018

/s/ Carmen E. Bremer

Carmen E. Bremer